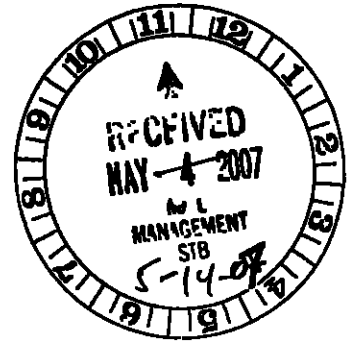


219296



May 1, 2007

Dick Keyes
1370 Mountain Circle Drive
Lenoir, N.C. 28645

ENTERED
Office of Proceedings

MAY 14 2007

Part of
Public Record

Mr Vernon A. Williams
Secretary
Surface Transportation Board
395 E. Street S. W.
Washington, DC 20423-0001

Re: Protest of Docket No. AB-999X Caldwell County Railroad Company
Discontinuance.

Dear Secretary Williams:

My brothers and I and other property owners wish to protest the requested discontinuance of a 5 mile section of rail line located in Caldwell County, N.C. We feel that a discontinuance harms financially owners of rail frontage and owners of existing rails sidings.

Our argument is that one property owner was protected from financial loss by the county and CCEDC and another property owner realized a large financial gain from the county's action. Would you please review the enclosed material and come to the conclusion that this discontinuance is unfair to all property owners except one and that the fair thing to do would be to continue service?

Please let me know if you need more information.

Sincerely,
Dick Keyes
Dick Keyes
828-758-1684
rkeyes@conninc.com

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Docket No. AB-999X

**PROTEST OF THE REQUEST BY CALDWELL COUNTY
RAILROAD COMPANY TO DISCONTINUE OF FIVE MILES OF
LOCATED IN CALDWELL COUNTY, NC**

INTRODUCTION

Caldwell County Railroad Company (CCRC) petitioned the Surface Transportation Board on March 22, 2007 to discontinue 5 miles of rail line located between milepost 107.5 and milepost 112.7 in Caldwell County, North Carolina. The request by the Caldwell County Railroad Company was made to accommodate one large commercial customer, Google, Inc. of Sunnyvale, California. Only one shipper/receiver, Sealed Air, Valmead Plant was given financial compensation to offset the loss of rail service arising from an agreement made with Google, Inc. Along the 5.2 mile section of rail line requested to be discontinued no other property owners were offered or given compensation to cover the loss of rail service. We oppose this petition because the petition was filed without thorough planning and without regard to the monetary damage to all other property owners with rail frontage and all other property owners with existing rail sidings.

BACKGROUND INFORMATION

We are against the CCRC and CCEDC petition to discontinue rail service from milepost 107.5 to milepost 112.7 for the following reasons:

- A discontinuance robs the property owners of valuable asset-rail service availability. A discontinuance robs those property owners with existing rail sidings of a valuable business asset-rail service to the business site.
- A single property owner was granted large financial compensation to cover the damages incurred because of the discontinuance of service to their property. No other property owners were offered compensation. This is discriminatory treatment.
- As a result of the agreement with Google, Inc. Caldwell County and the City of Lenoir leased from Robinson lumber company land to build an off loading facility at milepost 103 (approximate). The value of this lease is over \$3,000,000 over 40 years and note that this property owner leased rail frontage, not rail siding. I will fax copy of this agreement.
- CCRC has not properly maintained the tracks they lease and the rail line is unsafe and in a state of dis-repair. Caldwell County Economic Development Commission has not forced CCRC to maintain the rail lines to the level agreed to when the rail lines were leased.
- The length of the discontinuance is not indefinite; it is for a period of 30 years based upon the commitment of Caldwell County, NC, CCEDC, and CCRC to Google, Inc, of Sunnyvale, California. A discontinuance implies that service could be resumed at some point, but, under this agreement service could not be resumed until 2037. If an a business with existing rail siding needed service during this period CCRC and CCEDC could not provide it.

ARGUMENT AGAINST DISCONTINUANCE

My family has owned property along the CRCC rail line since the 1930's and we have always had rail service availability that we consider a valuable asset, which improves the value of our property. Other property owners have had rail service with existing sidings that have been used to receive and ship goods from their factories and businesses. These sidings are still in place and are in various states of condition. Among the businesses with rail sidings are

**Caldwell Builders Supply
Boone Lumber Company
Thomasville Furniture Industries
Structural Materials
Harper Furniture Company**

**Fairfield Chair
Lenoir Furniture Corporation
Broyhill Occasional Plant
Bernhardt Furniture Company**

These businesses do not use rail service at this time, but did use high volumes of service at one time. If business conditions changed, Caldwell County Railroad could not service them if the discontinuance is allowed. Caldwell County Railroad is obligated to provide service to anyone with a siding and anyone that has had service in the past. Therefore, it is unfair to subject all other property owners to the loss of actual service and loss of rail service availability.

We oppose the discontinuance of rail service of the CCRC line from milepost 107.5 to milepost 112.7 because of favorable treatment of one existing customer, Sealed Air. A summary of the agreement between Sealed Air states that Sealed Air will receive \$448,000.00 as a one-time payment to give up rail service. On behalf of Sealed Air, Caldwell County will build, at taxpayer expense, an offloading facility to offload materials being received by Sealed Air, Warrior Plant. Caldwell County, at taxpayer

expense, will pay for delivery of materials consigned to Sealed Air from the offloading site to Sealed Air Corporation, Warrior Plant. The amount of this expense to Caldwell County taxpayers is not to exceed \$250,000.00 per year. We submit to you that no other property owner with rail siding was offered compensation to give up rail service. No other property owner was offered compensation to cover the cost of delivering materials from the offloading site. Therefore, it is illegal and discriminatory for the CCEDC to offer compensation to one property owner and not to all others. We are submitting a copy of the agreement between Sealed Air and Caldwell County detailing Sealed Air's compensation arrangement (marked exhibit A). Ms. Beiter, I will fax document to you under separate cover.

Caldwell County and the City of Lenoir, N.C. entered into an agreement with Google, Inc., of Sunnyvale, California, to abate 100% of the county's business property taxes and 80% of real property taxes for a period of 30 years. All other concessions, payments, and abatements of expenses are for a period of 30 years starting in 2007. This means that the discontinuance of rail service from milepost 107.5 to milepost 112.7 will be for a period of 30 years. Caldwell County taxpayers have forgiven property tax income of approximately \$70,000,000 over 30 years under the agreement with Google, Inc.

CONCLUSION

We argue that this petition to discontinue service subjects all property owners along the discontinued section to undue hardship and damages the value of their property. It is an abuse of market power by CCRC and CCEDC to selectively eliminate rail service

to a group of property owners for the benefit of one company. Even though they have rail siding the property owners cannot sell their property to a customer needing rail service because the discontinuance takes service away for 30 years. One company with rail siding was established in 1946 and acquired rail siding shortly after that and others have had rail siding since the 1930's. In an area that is economically, depressed we believe that discontinuing service from existing customers takes away one tool that these businesses have to revive their operation. Many of the businesses with existing rail siding are family businesses and the owners have invested most of their hard earned dollars and years of their lives into their business. I am not sure, but it should be illegal to arbitrarily stop rail service to all existing customers to accommodate one company who requested service be stopped.

The expense to Caldwell County taxpayers resulting from discontinuance will enormous and an expense they cannot afford. If the petition to discontinue is allowed it will be for a period of 30 years based upon the agreement with Google Caldwell County taxpayers will have to pay for maintenance, weed and grass control, crossing repair, and bridge repair for a period of 30 years and during that period will not receive one cent of revenue from the discontinued portion of tracks owned by the CCEDC. Rail lines not used daily are like an abandoned house. If not occupied houses and buildings deteriorate and require a lot of money to repair and re-habilitate later. This is an unfair and unnecessary expense to place upon the Caldwell County taxpayers.

We oppose the discontinuance for these reasons and ask the STB to not allow it. We ask the STB the require CCEDC to bring the rail lines they own up to minimum standards for safe operation. We ask the STB to require the CCEDC to bring the rail lines they

own up to minimum operation standards because many portions of the line does not meet standard. We ask the STB to subpoena CCEDC for a copy of track and inspection report paid for by Caldwell County taxpayers dated 12/31/2005 and with this report, you can see the condition of the tracks as of 12/31/2005.

The property owners of rail line frontage and existing rail sidings from milepost 107.5 to 112.5 believe that it would be fair to all parties for the CCRC and CCEDC to take the following actions: continue rail service from milepost 107.5 to 112.5 to preserve the assets of the property owners with rail frontage and those with existing rail sidings. This section of rail passes through land suitable for economic development and those with existing rail sidings have buildings ready to sell to customers needing rail. This can be accomplished by building a connector line from a point prior to milepost 107.5 around the Google property and re-connect at some point past Google. The second method to continue service would be to offer to existing property owners the same grant given to Sealed Air. The Sealed Air grant paid for rail siding facilities upgrades and paid for the hauling of Sealed Air freight from the new county off loading facility to the Sealed Air Valmead plant. This would provide for fair treatment to all property owners.

Our position is simply that a discontinuance of rail service harms and inflicts monetary damages to existing property owners. Discontinuance robs these people of the ability to sell their property to a customer needing rail service or use the property in a business application needing rail service. At the same time, one rail service user, Sealed Air, was protected from any expense and monetary loss by a grant from Caldwell County and the City of Lenoir. It is discriminatory and unfair and should be illegal to favor one property owner over others. We have noted two transactions, one with Sealed Air and

one with Robinson Lumber Co that established the value of rail frontage and rail siding in our area. The value that Caldwell County and the City of Lenoir felt was appropriate was over \$3,000,000 in each case and so we conclude that our rail frontage and existing sidings would have similar value. Remember, the reason for the request for discontinuance is not that the rail line did not have customers. It did have business. The reason for the petition to discontinue is to accommodate Google, Inc of Sunnyvale, Ca and that is the only reason. Caldwell County forgave over \$70,000,000 in property taxes over 30 years and we feel that is enough sacrifice for our citizens. A connector line could have been built around Google and all rail frontage and sidings would be preserved. Discontinuance would needlessly harm property owners between milepost 107.5 and milepost 112.7 and we ask you to not allow it and look for other ways to solve the problem.

VERIFICATION

I, Dick Keyes, verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I also verify that I am a property owner along the 5.2 mile portion of rail line requested for discontinuance by the CCEDC.

April 29, 2007

Dick Keyes

Dick Keyes

EXHIBIT A

AGREEMENT WITH SEALED AIR

SEALED AIR

NORTH CAROLINA

ECONOMIC DEVELOPMENT GRANT AGREEMENT

CALDWELL COUNTY

This Economic Development Grant Agreement (the "Agreement") is entered into by and among the City of Lenoir (the "City"), a North Carolina municipal corporation, Caldwell County (the "County"), a political subdivision of the State of North Carolina, the Caldwell County Economic Development Commission, Inc. (the "EDC") and Sealed Air Corporation (US) ("Sealed Air"), a Delaware corporation having its principal place of business in Elmwood Park, New Jersey, and duly registered and doing business in North Carolina, including Lenoir, Caldwell County, North Carolina

WITNESSETH.

WHEREAS, in order for the City, the County and the EDC to accomplish the required circumstances, conditions and requirements necessary to enter into a related, but separate, Economic Development Incentive Agreement ("Fourth Party Agreement") with a fourth party entity to promote the development of new employment opportunities and other economic benefits for the citizens of the City and County, and in order for the City and the County to promote, preserve and maintain the current employment opportunities and other economic benefits presently provided by Sealed Air for local citizens, City, County, the EDC and Sealed Air desire to enter into this agreement pursuant to North Carolina General Statutes sects. 158-7 1, *et seq.*; and

WHEREAS, for and in consideration of the incentives from the City, the County and the EDC hereinafter described, and the agreement of Sealed Air, in the anticipated event that it may become necessary to discontinue rail service over that certain portion of the line over which the Caldwell County Railroad ("CCR") currently operates, approximately from milepost 107.5 to milepost 112.7 that presently services Sealed Air's facility located at 2075 Valway Road, Lenoir, North Carolina, to alter its method and mode of shipping and receiving materials, supplies and other items to and from its local facility and its agreement not to oppose and to support the discontinuance of the rail service described above, City and County agree to provide certain economic incentives, other assurances and protection to Sealed Air as more particularly described herein to induce Sealed Air to make such alterations and to support such discontinuance of rail service to accomplish the above-described purposes; and

WHEREAS, the County, City and the EDC are also entering into an agreement with the CCR (the "Railroad Agreement") which is also a part of the circumstances, conditions and requirements necessary for entry into the Fourth Party Agreement; pursuant to said Railroad Agreement the CCR may apply to the U.S. Surface Transportation Board ("STB") for regulatory authorization approval for the discontinuance of rail service over the portion of the rail line as described above; that in the event that it should not become necessary to discontinue rail service over such portion of said rail line, the parties agree that this Agreement shall not be necessary, since Sealed Air may in such event continue to utilize the freight services of the CCR as in the past, without interruption; in the event, for whatever reason, that rail service is not discontinued over such portion of the rail line described above, the parties agree that the financial obligations of the County and the City for payment to Sealed Air of grants for capital improvements and for increased shipping costs as described below shall terminate, except to the extent that Sealed Air shall have incurred actual and direct expenses for capital costs following receipt of notification of and authorization from the County and the City to begin such renovations, alterations and improvements as provided herein; the parties further agree that in the event that it should not become necessary to discontinue rail service over such portion of the rail line described above, that the County and City's obligation to construct a new freight off load site shall terminate, as well as any related entitlement of Sealed Air to any preference in rail freight surcharge rate as described below

WHEREAS, in the event that for whatever reasons, the Fourth Party Agreement referred to above should not be reached and entered into between the City, County and the fourth party entity, the parties agree that the primary purpose of this Agreement shall no longer exist or be served, and therefore this Agreement should terminate, except as to the provisions set forth herein which provide for the payment by City and County to Sealed Air for actual and direct costs incurred by Sealed Air for compliance with its obligations as set forth herein; and

WHEREAS, the parties desire hereby to document their respective commitments and agreements and, to the fullest extent permitted by North Carolina law, to contractually bind themselves thereto.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the parties agree and contract as follows:

1. GRANT FOR CAPITAL IMPROVEMENTS. City and County shall make a one-time reimbursement payment to Sealed Air for its costs up to the amount of \$448,000.00 which are directly and actually incurred by Sealed Air in making capital renovations, alterations and improvements to its present facility located at 2075 Valway Road, Lenoir, North Carolina (the "SAC Facility"), which are necessary to enable Sealed Air to receive materials, inventory and supplies by means other than rail. Sealed Air shall provide full and complete information and documentation to the City and the County reasonably necessary to verify and substantiate such actual costs. Such reimbursement to Sealed Air by City and County for capital renovations, alterations and improvements shall be for such costs which are actually and directly incurred by Sealed Air within one-hundred-and-eighty (180) day period following the written notification and authorization by the City and County to Sealed Air to begin such renovations, alterations and improvements. Such notification and authorization shall occur at least one-hundred-eighty (180) days prior to the discontinuance of rail service between approximately milepost 107.5 and milepost 112.7 as described above. Such reimbursement payment advances from the City and the County to Sealed Air shall be made in the nature of construction draws during such 180-day period and Sealed Air shall submit to the County and the City appropriate documentation and evidence of the actual and direct expenses of such renovations, alterations and improvements in order to establish the basis and entitlement for each payment. The County and the City shall issue payments to Sealed Air within thirty (30) days of their receipt of the aforementioned documentation.

2. GRANTS FOR INCREASED SHIPPING COSTS. City and County shall pay and provide to Sealed Air an annual grant payable on or before February 1 of each calendar year, beginning in 2008, in an amount not to exceed \$250,00.00 per year for a ten (10)-year period starting on the date of discontinuance of rail service in order to reimburse Sealed Air for any increase in the actual and real costs incurred by Sealed Air for receiving materials, supplies and other items at the SAC Facility during the preceding calendar year which are directly attributable to the alteration by Sealed Air of its method and mode of receiving materials and supplies at the SAC Facility, compared to the costs for such receiving such items via rail during each such previous one-year period. The first and last grant payments for the one hundred and twenty (120) month grant period shall be calculated on a pro-rata basis, as necessary, based on the number of months in the

preceding calendar year period upon which the grant payment(s) is calculated. In the event that any such grant payment by City and County to Sealed Air shall be less than \$250,000.00 based upon any such full one-year period, then the amount of difference in the actual amount of the annual grant and \$250,000.00 shall be reserved by City and County in order to continue making the same such annual grant payments to Sealed Air for additional years beyond the ten (10)-year period to the extent of the cumulative amount of such reserved funding remaining after the ten (10) year period until such reserved funding has been exhausted. Sealed Air shall provide to the City and County evidence and documentation of such comparative shipping cost difference(s) attributable to the alteration by Sealed Air of its method and mode of receiving materials and supplies sufficient to establish and substantiate the amount of each annual grant payment. The City and the County shall share equally in the funding of each such annual grant payment. The County and the City shall issue payments to Sealed Air within thirty (30) days of their receipt of the aforementioned documentation.

3. **FREIGHT SURCHARGE RATE.** As a condition of entering into this agreement, the City and County shall have obtained, or shall obtain simultaneously upon entering into this Agreement, a Separate Agreement (the "Railroad Agreement") with Southeast Shorthines, Incorporated, d/b/a Caldwell County Railroad ("CCR") which provides that for a ten (10) year period running from the date of completion of the new railcar offloading facility (the "Lenoir Offload Facility") to be located along the existing rail line within the Lenoir city limits, that the freight surcharge rate charged Sealed Air for shipping to both Sealed Air's Hudson Facility (located at 2001 International Boulevard, Hudson, NC 28638) and the Lenoir Offload Facility shall not exceed \$425.00 per rail car, plus an annual inflation adjustment using the lesser of the Rail Cost Adjustment Factor ("RCAF") unadjusted Federal Rate calculation, or the Standard Consumer Price Index Inflation rate, as the basis for such adjustment. In the event that CCR nevertheless utilizes the higher of these two annual inflation factors as the basis for such adjustment, then the County and the City, in addition to the annual grant payments for increased shipping costs described above in paragraph 2, shall in the same manner and for the same ten (10) year period annually reimburse Sealed Air for any additional expenses and increased costs attributable to CCR's utilization of such higher basis for the inflation adjustment. In addition to the foregoing, and in addition to the annual grant payments for increased shipping costs described above in paragraph 2, the County and

the City shall reimburse Sealed Air for any and all monthly fuel charges imposed by CCR upon Sealed Air pursuant to Freight Tariff CWCY 9501 for the aforementioned ten (10) year period. Finally, and in addition to the annual grant payments for increased shipping costs described in paragraph 2, the County and the City shall reimburse Sealed Air for all additional amounts charged to Sealed Air by CCR attributable to CCR's calculation of the initial per rail car annual inflation rate adjustment on April 1, 2007, as opposed to August 31, 2008. Any and all expenses, charges and/or increased costs imposed upon and/or incurred by Sealed Air and reimbursed by the County and City attributable to (i) CCR's use of the RCAF as opposed to the Consumer Price Index when calculating the annual inflation adjustment, (ii) any monthly fuel surcharges imposed by CCR, and (iii) CCR's calculation and imposition of the initial per rail car annual inflation rate adjustment on April 1, 2007, as opposed to August 31, 2008, shall not reduce the \$250,000 annual grant allocations specified in Section 2. If, as a result of circumstances which arise as a result of events beyond the control of the parties or of the CCR, the freight surcharge rate should be increased beyond the agreed \$425.00 amount, excluding the inflation adjustment and monthly fuel surcharges pursuant to Freight Tariff CWCY 9501, the parties agree that Sealed Air, with the cooperation and support of the City and County, shall reasonably consider and use other alternative means for shipping and that Sealed Air shall in any event be entitled to include the amount of such additional costs as part of the basis for calculation of the Grants for Increased Shipping Costs described above to the extent of the \$250,000.00 annual maximum grant amount. Sealed Air shall be entitled during the ten (10) year period running from the date of completion of the Lenoir Offload Facility to the above-described \$425.00 per car low density freight surcharge rate cap, plus the inflation adjustment, at both the Hudson Facility and at the Lenoir Offload Facility to be constructed by the City and the County pursuant to its agreement with the CCR.

4. OFFLOAD SITE As a further condition of this Agreement, the Lenoir Offload Facility which is to be developed by the City and County as part of the Railroad Agreement shall include provision for the operation and maintenance of offload facilities in Lenoir, at a site tentatively identified as property adjacent to the rail line and the location of Robinson Lumber Company along US-321A, which shall accommodate a minimum of eight (8) railroad cars reserved and available for Sealed Air shipments, and Sealed Air shall incur no storage or demurrage charges to the extent of such number of

railroad cars. The Lenoir Offload Facility shall be completed by the City and County no later than August 31, 2007. As a condition for this Agreement, Sealed Air shall exclusively use the Hudson Facility and Lenoir Offload Facility for rail car shipping of its materials, supplies and other items to its facilities located in Caldwell County, provided that such off-load facilities provide sufficient rail car capacity to accommodate shipments to Sealed Air. Nothing herein shall be construed to require Sealed Air to utilize rail carriage for shipment of materials, supplies and other items to its Caldwell County facilities where other modalities are presently used to transport such goods or where other modalities are appropriate under the circumstances. The parties agree that the Sealed Air shall be consulted and have on-going input into the design of the Lenoir Offload Facility in order to accommodate current and future railcar needs for the offload facility. Sealed Air shall have twenty-four (24) hour access to the Lenoir Offload Facility. The payment of capital costs for construction and improvements to the Lenoir Offload Facility shall be made by parties other than Sealed Air and Sealed Air shall have no responsibility for any such costs. The City and County warrant and represent that the Lenoir Offload Facility shall be completed and made operational and accessible to Sealed Air prior to the discontinuance of rail service between approximately milepost 107.5 and milepost 112.7 as described above.

5. OFF LOAD SITE EVALUATION Following the expiration of five (5) years of the ten (10) year period of this Agreement, Sealed Air shall have the option to review and evaluate the Hudson and Lenoir Offload facilities in order to determine the sufficiency of the future capacity of both sites to satisfy the shipping and security needs of the company. Upon the determination by Sealed Air that such future capacity is insufficient to satisfy such shipping needs, or that the continued use of the Hudson and Lenoir Offload facilities is otherwise undesirable, the company may elect in its sole discretion to terminate this Agreement and to utilize other freight shipping options for its needs, thereby forgoing all of its subsequent rights and entitlements to any grants for increased shipping costs from the County or the City, as well as any rights or entitlements to restrictions on the amount of freight surcharge rates to be charged to Sealed Air or other favorable treatments as described in this Agreement.

6. NON-APPROPRIATION. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the County or City within the meaning of any constitutional debt limitation. No provision of this Agreement shall be

construed or interpreted as delegating governmental powers as a donation or a lending of the credit of the County or City within the meaning of the State constitution. This Agreement shall not directly or indirectly or contingently obligate the County or City to make any payments beyond those appropriated in the County or City's sole discretion for any fiscal year in which this agreement shall be in effect. Nevertheless, the County and the City agree to undertake all necessary and appropriate actions to insure that necessary appropriations are approved in each fiscal year to enable the County and the City to satisfy their obligations under this Agreement consistent with North Carolina law. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source or the County's or City's moneys, nor shall any provision of the Agreement restrict to any extent prohibited by law, any action or right of action on the part of any future County or City governing body. To the extent of any conflict between this Article and any other provision of this Agreement, this Article shall take priority.

7 NON-ASSIGNMENT. No party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the parties. Provided, however, that this Agreement may be assigned by Sealed Air to its corporate parent Sealed Air Corporation, Cryovac, Inc., or any wholly owned subsidiary of Sealed Air, Sealed Air Corporation, or Cryovac, Inc., without the consent of all other parties, provided that Sealed Air will guarantee the performance by its assignee of the obligations due under this Agreement.

8 NORTH CAROLINA LAW APPLICABLE. The parties intend that this Agreement shall be governed by the laws of the State of North Carolina and that courts of the General Court of Justice of the State of North Carolina have the sole and exclusive jurisdiction to adjudicate and decide the respective rights, obligations and entitlements of the parties as to any and all claims or issues arising from this Agreement, and the parties do and shall submit themselves to such court in the event of litigation related thereto

9. NOTICES. Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement. Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

- (a) If to the Sealed Air, to Roger Jackson,
Regional Manufacturing Manager, Post Office Box

1015, 2075 Valway Road, Lenoir, North Carolina
28645. With copy that shall not constitute notice to
Legal Department, Sealed Air Corporation, 200
Riverfront Boulevard, Elmwood Park, NJ 07407-
1309.

(b) If to the City, to Lane Bailey or successor,
City Manager, City of Lenoir, Post Office Box 958,
801 West Avenue, Lenoir, North Carolina 28645.

(c) If to the County, to Bobby White or successor,
County Manger, Caldwell County, P. O. Box 2200,
Lenoir, North Carolina 28645.

(d) Any addressee may designate additional or
different addresses for communications by notice
given under this Section to each of the others

10. NON-BUSINESS DAYS. If the date for making any payment or the last day
for the performance of any act or the exercising of any right shall not be a Business Day,
such payment shall be made or act performed or right exercised on or before the next
preceding Business Day

11 SEVERABILITY If any provision of this Agreement shall be determined to
be unenforceable, that shall not affect any other provision of this Agreement

12 ENTIRE AGREEMENT, AMENDMENTS. This Agreement constitutes the
entire contract and agreement among the parties and shall not be changed except in
writing signed by all parties. This Agreement may be executed in several counterparts,
including separate counterparts. Each shall be an original, but all of them together
constitute the same instrument. Any subsequent additional provisions or modifications to
this Agreement shall be in writing and duly signed by an authorized officer or official of
all parties to this instrument.

13. MEDIATION In the event that any dispute or controversy arise between or
among the parties as to any material obligations of any party to this Agreement, or the
performance thereof, the parties agree that prior to initiating or prosecuting any litigation

in court to assert any claim or right arising under the Agreement as to any other party, any such asserting party shall endeavor to first submit such asserted claim or right to a non-binding mediation process to be conducted in accordance with the rules and procedures of the North Carolina Mediated Settlement Conferences established pursuant to N.C.G.S. sect 7A-38.1, and all parties do agree to likewise submit themselves to such mediation process and abide by the rules and procedures governing such process and to fully participate and cooperate in such mediation process in a good faith attempt to reach a mutual agreement which resolves any such dispute or claim among the parties. If, however, such process is unsuccessful, the parties each reserve the rights to pursue their respective rights or remedies asserted under this Agreement by litigation. Nothing herein shall preclude any party from proceeding with litigation prior to the completion of the mediation process if that party determines that litigation is necessary to preserve that party's rights under this Agreement.

14 LIABILITY OF OFFICERS AND AGENTS. No officer, agent or employee of the County, the City, or Sealed Air shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law

15 LACK OF NECESSITY In the event that it should not become necessary to discontinue rail service over the portion of the line over which the CCR currently operates approximately from milepost 107.5 to milepost 112.7, the parties agree that this Agreement shall not be necessary, since Sealed Air may in such event continue to utilize the freight services of the CCR as in the past, without interruption. In such circumstance, the parties agree that the financial obligations of the County and the City for payment to Sealed Air of grants for capital improvements as specified in Section 1 or for increased shipping costs as specified in Section 2 shall terminate, except to the extent that Sealed Air shall have incurred actual and direct expenses for capital costs, increased shipping costs, and other expenses following receipt of notification of and authorization from the County and the City to begin such renovations, alterations and improvements as provided herein. The parties further agree that in the event that it should not become necessary to discontinue rail service over such portion of the rail line described above, that the County

and City's obligation to construct the Lenoir Offload Facility shall terminate, as well as any entitlement of Sealed Air to any preference in rail freight surcharge rates as described in Section 3. In the event that for whatever reason, the Fourth Party Agreement between and among should not be reached and entered into between the City, County and the fourth party entity, the parties agree that the primary purpose of this Agreement shall no longer exist or be served, and therefore this Agreement should terminate, except as to the provisions set forth herein which provide for the payment by City and County to Sealed Air for actual and direct costs incurred by Sealed Air for compliance with its obligations as set forth herein and/or otherwise incurred by Sealed Air in reasonable reliance upon the City and County's notifications and actions.

16. **TAXES.** The City, County, and EDC shall not impose any extraordinary tax and/or special assessment upon Sealed Air which are necessitated by or attributable to the performance by the City, County and the EDC of their respective obligations under this Agreement.

17. **REPRESENTATIONS AND WARRANTIES.** The City, County, and EDC each represent and warrant as follows.

(a) **Status.** Each (i) is duly organized, validly existing and, if applicable, in good standing, under the laws of the jurisdiction of its incorporation, establishment, or organization, and (ii) has the governmental, municipal, corporate, or comparable power and authority to own and utilize its property and assets and to enter into the transactions and undertake the obligations set forth in this Agreement.

(b) **Power and Authority** Each has the governmental, municipal, corporate, or comparable power and authority to execute, deliver and perform the terms and provisions of this Agreement and the Railroad Agreement to which it is a party and has taken all necessary governmental, municipal, corporate, or comparable action to authorize the execution, delivery and performance by it of each of such agreements.

(c) **No Violation** Neither the execution, delivery or performance by the City, County and EDC of this Agreement and the Railroad Agreement to which it is a party, nor compliance by it with the terms and provisions thereof,

(i) contravenes any provision of any law, statute, rule or regulation or any material order, writ, injunction or decree of any court or governmental instrumentality. (ii) conflicts or is inconsistent with or results in any breach of any of the terms, covenants, conditions or provisions of, or constitutes a default under, any material agreement, contract or instrument to which the City, County, or EDC is a party or by which it or any of its property or assets are bound or to which it may be subject or (iii) violates any provision of the articles of incorporation, charter or by-laws (or the equivalent documents) of the City, County, or EDC.

(d) Governmental Approvals. No order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made and which remain in full force and effect), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained by the City, County, or EDC to authorize, or is required for, (i) the execution, delivery and performance of this Agreement and the Railroad Agreement or (ii) the legality, validity, binding effect or enforceability of this Agreement or the Railroad Agreement.

This the 12 day of January, 2007

ATTEST

CITY OF LENOIR

Shirley M. Cannon

By:

David Barlow

Clerk

Hon. David Barlow

Mayor

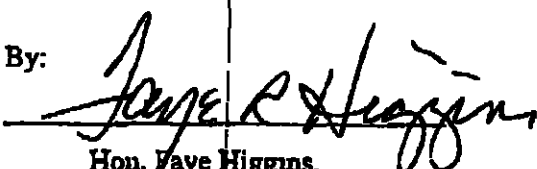
ATTEST.

CALDWELL COUNTY

Clerk

County

By:


Hon. Faye Higgins,
Chairperson, Board of
Commissioners


CALDWELL COUNTY ECONOMIC DEVELOPMENT COMMISSION,
INCORPORATED

By:


Allen Stewart
Authorized Corporate Officer

SEALED AIR CORPORATION (US)

By:

 3/10/07
Kevin Hohan
Vice President, Logistics

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.


Sam Yearick, County Finance Officer


Danny Gilbert, City Finance Officer

"... An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection." N.C. Gen Stat § 159-28 (a).

EXHIBIT B

LEASE OF RAIL FRONTAGE FROM ROBINSON LUMBER CO.

Prepared by: Wilson, Lackey and Rohr, P.C.

NORTH CAROLINA

**LEASE AGREEMENT AND RIGHT
OF FIRST REFUSAL TO PURCHASE**

CALDWELL COUNTY

THIS LEASE AGREEMENT AND RIGHT OF FIRST REFUSAL TO PURCHASE ("this Agreement") is made and entered into on this the ____ day of April, 2007, by and between ROBINSON LUMBER COMPANY, INC., a North Carolina corporation, and GEORGE S. ROBINSON and wife, ANN P. ROBINSON ("Lessors"), and CALDWELL COUNTY ECONOMIC DEVELOPMENT COMMISSION, INC., a North Carolina non-profit corporation ("Lessee").

For and in consideration of the mutual promises and covenants contained hereinafter, Lessors do hereby rent, lease, and demise unto Lessee, and Lessee does hereby rent and lease from Lessors, for and during the term and subject to the terms and conditions herein set forth, a five (5) acres portion of Lessors' property lying and being in the City of Lenoir, County of Caldwell, North Carolina, and being Lots 1 and 2 as shown on the plat map titled "Trans-Load Facility Site" and recorded in Plat Book 24, at Page 70, Caldwell County Registry ("the Property").

THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE AS FOLLOWS:

1. TERM. The term of this Agreement is a period of thirty-nine years (39) years and nine (9) months, commencing on the first day of April, 2007 and terminating on the last

day of December, 2046. Provided, however, that Lessee may, at its sole option, elect to terminate this Agreement effective the last day of December, 2011 by giving Lessors and North Carolina Department of Transportation (NCDOT) written notice of its election to terminate no later than June 30, 2011.

2. **RENT.** The rent to be paid by Lessee to Lessors for the Property during the first four (4) years and nine (9) months of the lease term is to be determined as provided on the attached Exhibit A. The base rent for the remaining thirty-five (35) years shall be the amount of \$81,750.00 annually (payable monthly in the amount of \$6,812.50) adjusted January 1, 2012 and once every five (5) years thereafter by the previous five (5) years' cumulative increase (or decrease) in the Consumer Price Index for durable goods in the Southeastern United States as published by the Department of Labor in its' Atlanta, Georgia office for the most recent month published prior to each adjustment date.

By way of example, if the cumulative increase in the CPI for the five (5) years prior to January 1, 2012 was ten percent (10%), rent for the next five years of the lease term (January 1, 2012 through December 31, 2016) shall increase \$8,175.00 annually (\$81,750.00 times 10% equals \$8,175.00), and the rent shall equal \$89,925.00 annually, payable monthly in the amount of \$7,493.75.

Rent for each month is due and payable on the fifth day of the month. If any rental payment is made more than ten (10) days after the date it is due, then Lessee shall pay to Lessors, in addition to the rent, a late payment fee equal to five percent (5%) of the past due rent. All rental payments shall be made payable to George S. Robinson and mailed to him at: Post Office Box 1558, Lenoir, North Carolina 28645.

3. **SECURITY DEPOSIT.** There is no security deposit.

4. **USE OF PROPERTY.** Lessee shall use the Property for the purposes of a railroad off-loading or trans-loading facility, or for similar railroad purposes. Lessee shall not use the Property for any other purpose without the written consent of Lessors.

5. **LESSEE'S IMPROVEMENTS TO THE PROPERTY.** At all times during the term of this Agreement Lessee may, at its expense, make any and all improvements upon the Property, and may repair and maintain such improvements, as are reasonably necessary or beneficial for the operation of a railroad off-loading or trans-loading facility or similar

facility. Lessee shall retain title to all fixtures, equipment, additions, and improvements (hereinafter called "Improvements") to the Property made by it or on its behalf, including Improvements such as buildings, track, fences, and utility poles which might otherwise be deemed to have become part of the Property, and Lessee shall be entitled to take up and remove all such Improvements at Lessee's expense within six (6) months after termination of this Agreement and restore the Property to a neat and orderly condition. In the event Lessee fails to do so, Lessors may, at their sole election, remove or dispose of such Improvements without liability to Lessee for same, and charge Lessee for all cost and expense incidental to such removal. Lessee will, at its expense, remove Lessors' building known as the "stacker building", the dip tank and related equipment from Lot 1 and relocate it on Lessors' adjoining property.

Notwithstanding the foregoing, if Lessee terminates, abandons, discontinues service, or cease operations at the Property at any time prior to December 31, 2046, then Lessee agrees to so advise Lessors and North Carolina Department of Transportation (NCDOT) by giving six (6) months prior written notice of its intention to do so prior to effecting such abandonment or discontinuance; and in addition to any other legal or equitable remedies which Lessors may have, Lessee hereby grants to Lessors an option and first right of refusal to purchase said Improvements or the part or parts thereof to be abandoned or discontinued at the amount which is equal to the amount which the EDC and/or County are required to refund to NCDOT pursuant to the terms of the Contingent Interest Agreement and Instrument For Indebtedness between the parties to this Agreement and NCDOT, in order to enable Lessors to maintain rail service to the Property. This paragraph shall not be construed to grant Lessee any right to terminate this Agreement not otherwise provided in this Agreement.

Lessors acknowledge and agree that their option to purchase and right of first refusal to purchase the Improvements are and shall be subordinate to the rights of the North Carolina Department of Transportation (NCDOT) and the Appalachian Regional Commission (ARC) granted or to be granted pursuant to a Contingent Interest Agreement and Instrument for Indebtedness between Lessors, Lessee, Caldwell County, City of Lenoir and NCDOT (in its own capacity and as grant administrator for ARC).

6. **COMPLIANCE WITH ALL APPLICABLE LAWS.** Lessee shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations applicable to Lessee's intended use of the Property.

7. **ASSIGNMENT, SUBLETTING AND ENCUMBRANCE OF LEASE.** Neither Lessors nor Lessee shall assign or transfer this Agreement or any interest arising hereunder without the prior written consent of the other party, except that Lessors acknowledge and grant permission for Lessee to sublet the Property to the Caldwell County Railroad Company so long as the Property will continue to be used as a railroad trans-load or off-load transportation facility.

The parties hereto acknowledge and grant permission, if needed, that other agreements relating to the development, operation and financing of the common carrier rail service and trans-load facility to be constructed on the Property are being negotiated and executed with other parties contemporaneously with this Agreement, and that in no way will Lessee's and or its agents' or independent contractors' rights to develop and operate rail services be abridged by the Lessors as related to the use of the Property. The parties also acknowledge that other documents are being negotiated and executed with third parties contemporaneously with this Agreement concerning development of new business, additional car counts, new revenue and a formula for profit-sharing between the public and private sectors without which the public investment would not be made. These other agreements in no way affect the performance of either Lessors or Lessee of their obligations under this Agreement.

8. **COVENANTS OF TITLE AND QUIET ENJOYMENT.** Lessors covenant, represent and warrant that they have full right and power to execute and perform this Agreement and to grant the estate demised herein to Lessee. Lessors further covenant that Lessee shall peaceably and quietly have, hold and enjoy the Property during the terms of this Agreement, subject, however, to Lessee's performance of its covenants and conditions hereunder.

So long as Lessee is not in default of the rental payments, or any other of its obligations as set forth herein, then subject to the provisions of Section 9, below, it shall have free and unrestricted use of the Property and to the quiet enjoyment thereof, including

without limitation uninterrupted access to the Property and to all utilities presently serving or needed to serve the Property, and Lessors shall warrant and defend such rights from any claims or actions arising by, through, or under Lessors. In consideration thereof, Lessee shall maintain the Property and all improvements thereon at Lessee's expense and pay in a timely manner all utility charges, materialmen's and similar liens, and special assessments accruing on (and, in the case of utility charges and materialmen's liens, as a result of Lessee's use of) the Property, during the term of this Agreement, and Lessee agrees to indemnify and save harmless Lessors from all such charges, liens, taxes and assessments, except as provided in Section 12, below.

9. **LESSORS' USE OF THE PROPERTY.** Lessors and their employees shall have access to and use of Lot 1 of the Property for its continued use for the purposes of Robinson Lumber Company, Inc., provided that such access and use shall not unreasonably interfere with the operation of the railroad off-load or trans-load facility located thereon. Provided, however, that Lessors' use of the Improvements on Lot 1 will require payment of the same charges as are charged to other users of the Trans-Load Facility.

Lessors and their employees shall have access to and use of Lot 2 of the Property for the sole purpose of developing, locating thereon and operating complementary services to the railroad off-load or trans-loading facility to be located on Lot 1, to include both outside and indoor storage of wood products and related commodities, as well as other related services determined by customer demand.

10. **ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND INDEMNIFICATIONS.** Lessors shall indemnify and hold Lessee harmless from all costs, claims, and liabilities associated with any dangerous, hazardous, or toxic materials, contamination, or conditions on the Property, including with limitation those arising from the violation of past, present, or future environmental or health related ordinances, regulations, laws and requirements and those based on principles of strict liability, (hereinafter called "Environmental Impairment"), existing at or prior to the commencement of this Agreement. The parties hereto acknowledge that an environmental audit has been performed on the Property at the instance of the Lessors, the results of which are documented, and the Lessee does not, by virtue of entering into this Agreement or otherwise, assume any of the risks or

costs associated with any Environmental Impairment disclosed or suggested by such audit, and that as between Lessee and Lessors, Lessors assume and shall bear all such risks and costs, including any containment, preventive, or remedial actions required as a result of any Environmental Impairment disclosed by such audit. Lessee agrees to and shall indemnify and save harmless Lessors from all costs, claims and liabilities associated with Environmental Impairment caused by Lessee or anyone acting by, through or under Lessee and Lessee shall indemnify, hold harmless and defend Lessors from any and all other costs, claims and liabilities arising in any manner from Lessee's use of the Property, except such cost, claims and liabilities caused by the negligence of Lessors.

11. **UTILITIES.** Lessee shall cause all utilities to be furnished to Lot 1 of the Property to be separately metered and billed to Lessee, and Lessee shall be solely responsible for the payment of all such utilities. Lessors shall be responsible for all utilities used by them on Lot 2.

12. **PROPERTY TAXES.** Lessors are responsible for the timely payment of all ad valorem taxes and other assessments against the Property. Lessee shall pay annually to Lessors, no later than December 31 of each year, that portion of the ad valorem taxes and other assessments against the Property that is attributable to Lessee's Improvements upon Lot 1 of the Property, but not that portion that is attributable to the land.

13. **CASUALTY AND LIABILITY INSURANCE REQUIREMENTS.** Lessee shall, at all times during the term of this Agreement, insure, at its expense and in such amounts of coverage as it deems adequate, the leasehold improvements to be constructed as provided in Section 5, above, and all of its equipment, furnishings, supplies and other business personal property located in or about the Property, against loss or damage by fire, theft and other insurable casualties. Lessors shall have no liability for any loss or damage to Lessee's leasehold Improvements, or to Lessee's equipment, furnishings or other property, unless such loss or damage is caused by Lessors, their employees, agents or assigns.

Lessee shall (or in the alternative may require the operator of the trans-load facility located on the Property to) procure, maintain and keep in effect during the entire term of this Agreement, at its sole expense, a policy of comprehensive liability insurance with limits not less than \$5,000,000. This policy shall protect Lessors against any and all liability arising

from the exercise of the rights granted herein, including without limitation, Lessee's indemnity obligation, personal injury, death and property damage. The policy shall name Lessors as additional insureds and shall contain standard contractual liability protection, a waiver of subrogation clause in favor of Lessors and a cross liability exclusion. The policy shall be with a good and solvent company, satisfactory to Lessors with a minimum rating of "A" with A.M. Best Co. and shall contain a provision that it cannot be canceled until and unless Lessors have received at least thirty (30) days advance written notice of the proposed cancellation. Lessee shall provide Lessors with a certificate of insurance annually evidencing such policy. Further, Lessee shall maintain and require all of its agents, contractors and business associates entering upon the Property to maintain workers compensation and automobile liability insurance policies in at least the minimum statutory amounts.

Lessors shall procure, maintain and keep in effect during the entire term of this Agreement, at their sole expense, a separate policy of comprehensive liability insurance with limits not less than \$5,000,000. This policy shall protect Lessee against any and all liability arising from the exercise of the rights granted to Lessors herein, including without limitation, Lessors' indemnity obligation, personal injury, death and property damage. The policy shall name Lessee as an additional insured and shall contain standard contractual liability protection, a waiver of subrogation clause in favor of Lessee and a cross liability exclusion. The policy shall be with a good and solvent company, satisfactory to Lessee with a minimum rating of "A" with A.M. Best Co. and shall contain a provision that it cannot be canceled until and unless Lessee has received at least thirty (30) days advance written notice of the proposed cancellation. Lessors shall provide Lessee with a certificate of insurance annually evidencing such policy. Further, Lessors shall maintain and require all of its agents, contractors and business associates entering upon the Property to maintain workers compensation and automobile liability insurance policies in at least the minimum statutory amounts. Provided, however, that if one or more of the other agreements entered into contemporaneously with this Agreement, as referred to in Section 7, above, require Lessors to maintain comprehensive liability insurance coverage in at least the same policy limits of coverage, this paragraph shall not be construed to require duplicate policies of coverage so long as Lessee is covered by Lessors as an additional insured under one policy meeting the

requirements of this paragraph.

14. NO IMPLIED WAIVER. *The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth, or to declare a default or forfeiture of this Agreement, shall not be construed as a waiver of such term or condition or of the non-breaching party's right to enforce such term or condition in the event of continuing or further breaches, but all disputes that may arise from the performance of the parties to this Agreement shall be referred to binding arbitration as provided in Section 21, below .*

15. INDEMNIFICATION. *Except as otherwise expressly provided in this Agreement, as a part of the consideration for this Agreement, without which these rights would not have been granted, the Lessee agrees to indemnify and hold harmless, Lessors from and against all liabilities, losses, damages, claims, demands, suits, fines, penalties, judgments, costs, attorney fees and expenses (the "Loss") for any personal injury to or loss of life of, any person whomsoever, including but not limited to employees, agents or licensees of Lessors, or any damage to any property including, but not limited to property of the parties or property in possession or custody of the parties, hereto, which such Loss may be caused by, result from or arise by reason of, in connection with or incident to the grant or exercise of the rights herein granted or the presence or activities of the Lessee, their employees, agents, contractors on the Property, unless caused by the fault or negligence of Lessors, their employees or agents.*

Except as otherwise expressly provided in this Agreement, as a part of the consideration for this Agreement, without which these rights would not have been granted, the Lessors agrees to indemnify and hold harmless, Lessee from and against all liabilities, losses, damages, claims, demands, suits, fines, penalties, judgments, costs, attorney fees and expenses (the "Loss") for any personal injury to or loss of life of, any person whomsoever, including but not limited to employees, agents or licensees of Lessee, or any damage to any property including, but not limited to property of the parties or property in possession or custody of the parties, hereto, which such Loss may be caused by, result from or arise by reason of, in connection with or incident to the grant or exercise of the rights herein granted

or the presence or activities of the Lessors, their employees, agents, contractors on the Property, unless caused by the fault or negligence of Lessee, its employees or agents.

These indemnity commitments, together with any other indemnities contained in this Agreement, extend not only to the parties to this Agreement but also to their respective parent organizations or corporations, subsidiaries and affiliates, and all of their directors, officers, agents and employees. All indemnities contained in this Agreement shall be continuing obligations for so long as this Agreement is in effect and thereafter until all potential liability is extinguished.

16. HOLDING OVER. In the absence of any written agreement to the contrary, if Lessee should remain in occupancy of the Property after the expiration of the lease term, then Lessee shall become a tenant from year to year, and all other provisions of this Agreement shall remain in full force and effect.

17. RIGHT OF FIRST REFUSAL. If at any time during the term of this Lease Agreement, Lessors elect to sell, convey or otherwise dispose of the Property, or any other real property owned by the Lessors, or any of them, which are contiguous to the Property bounded by Norwood Street on the east, Southwest Boulevard on the north, Caldwell County Economic Development Commission, Inc. (Caldwell County Railroad) on the west and Schwartz & Schwartz on the south, and receive from a third party an offer for the Property (or contiguous property), Lessee will have a right of first refusal to purchase the Property (or contiguous property) from Lessors. Lessee shall have thirty (30) days to advise Lessors of its intent to exercise this right of first refusal, and an additional sixty (60) days thereafter to close on the purchase of the Property (or contiguous property). The thirty (30) day notice period will commence to run upon Lessee's receipt from Lessor of an exact copy of the written purchase offer from the third party. If Lessee exercises this right of first refusal, Lessee shall be entitled to purchase the Property (or contiguous property) upon the same terms and conditions as provided in the third party offer, except that the time periods for giving notice and closing as provided herein shall control over any time periods contained in the third party offer.

18. OPTION TO LEASE ADDITIONAL ACREAGE. Lessors grant to Lessee an option, which can be exercised only during the first five (5) years of this

Agreement, to lease for the balance of the term of this Agreement additional acreage for expansion of the rail trans-load facilities. The additional acreage which Lessee may opt to lease is shown in red on the attached Exhibit B. If Lessee exercises this option by giving written notice to Lessors during the first five (5) years of this Agreement, the rent for the additional acreage shall be \$1,362.50 per month per acre, subject to the cost of living adjustment as provided in Section 2, above. If Lessee requires that any of Lessors' structures be removed from the additional acreage to accommodate Lessee's intended use, then Lessors shall remove any such structures, but the removal shall be at Lessee's expense.

19. **NOTICES.** All notices, demands, requests or submissions which are required or permitted to be given pursuant to this Agreement shall be in writing, shall be effective upon receipt and shall be delivered to the party entitled to receive the same by certified mail addressed to:

FOR LESSORS: Mr. George S. Robinson
Post Office Box 1405
Lenoir, North Carolina 28645

FOR LESSEE: Mr. Bill Stone, Vice Chairman
Caldwell County Economic Development Commission
Post Office Box 2888
Lenoir, North Carolina 28645

with copies to:

Mr. Jack Horton, Manager
Caldwell County
Post Office Box 2200
Lenoir, North Carolina 28645

Mr. Lane Bailey, Manager
City of Lenoir
Post Office Box 958
Lenoir, North Carolina 28645

Mr. Pat Simmons
Rail Division
North Carolina Department of Transportation
1553 Mail Service Center
Raleigh, North Carolina 27699-1553

These recipients and addresses may be changed by giving notice in the manner

provided for above.

20. **FORCE MAJEURE.** The obligations of either party hereunder shall be suspended to the extent a party is prevented from complying therewith due to, or as a result of, the following causes: acts of God, including but not limited to flood, storm, earthquake, hurricane, tornado, or other severe weather or climatic conditions; washout; acts of public enemy, war, blockade, insurrection, vandalism or sabotage; strike, lockout or other labor disturbance; or governmental law, order or regulation.

21. **ARBITRATION.** If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement, or the breach thereof, upon which the parties cannot agree, other than a question or controversy in connection with liability for injury, death, destruction, loss and damage, as provided in Section 15, above, such question or controversy shall be submitted to and settled by a single competent and disinterested arbitrator if the parties to the dispute are able to agree upon such single arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party. Otherwise, the party demanding such arbitration (the demanding party) shall notify the other party (the noticed party) in writing of such demand, stating the question or questions to be submitted for decision and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the demanding party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, the arbitrator for the demanding party shall select one for the noticed party. The arbitrators so chosen shall select one additional arbitrator to complete the board. If they fail to agree upon an additional arbitrator, the same shall, upon application of any party, be selected pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Unless specifically provided otherwise in this Agreement, all of the applicable Commercial Arbitration Rules of American Arbitration Association shall apply and govern any arbitration proceedings hereunder. Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of demand for arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as they deem

reasonable of as either party may submit with witnesses required to be sworn and may hear arguments of counsel or others. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award in writing which shall be final, binding and conclusive on the parties when delivered to them and shall be enforceable by either of them in any court of competent jurisdiction. Until the arbitrator(s) shall issue the final decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said final decision or award, each party shall forthwith comply with said final decision or award immediately after receiving it. Any sum owed by one party to the other as a result of arbitration shall be paid by the owing party within thirty (30) days of such delivery, together with interest on such sum at the interest rate on three (3) month Treasury Bills in effect on the date of the arbitration decision or award, from the date when the loss or damage occurred or the expense was incurred or the amount was owing, as the case may be, to the date such sum is paid. Each party to the arbitration shall pay the compensation, costs and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits and counsel. The compensation, cost and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by each of the parties to the arbitration. The books and papers of both parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the arbitrator(s).

22. **RELATIONSHIP OF PARTIES.** It is understood that Lessors and Lessee are independent contractors with respect to this Agreement, and that no other relationship between Lessors and Lessee is created hereby.

23. **AUTHORITY AND BINDING EFFECT.** The parties hereto represent and warrant to the other party that each has the authority to enter into this Agreement and that all necessary consents, assignments, resolutions, permits, licenses, certificates and regulatory or other governmental approvals which are prerequisite to entering into this Agreement have been obtained. Both parties further represent and warrant to the other party that there are no contingencies or conditions which must be satisfied prior to entering into this Agreement and that this Agreement is not subject to termination by the act, demand or request of any

third party or otherwise in any manner not contemplated and set forth in this Agreement.

24. **BINDING EFFECT.** This Lease is binding upon the parties, their heirs, personal representatives, successors and assigns.

25. **APPLICABLE LAW.** This Agreement has been made and entered into in the State of North Carolina and shall be governed and construed in accordance with the laws of that State.

26. **FULLY INTEGRATED AGREEMENT.** This Agreement, together with Exhibits A and B hereto, contains all of the agreements of the parties hereto and supersedes any previous negotiations.

27. **MODIFICATION.** No modification of any provision contained herein shall be valid unless in writing and signed and agreed to by both Lessors and Lessee.

28. **CAPTIONS.** Captions in this Agreement are solely for convenience of reference and shall not in any way limit or amplify the terms and conditions contained herein.

IN TESTIMONY WHEREOF, this Agreement has been executed by the parties hereto, in duplicate originals, on the date first above written.

LESSORS:

LESSEE:

ROBINSON LUMBER COMPANY, INC.

**CALDWELL COUNTY ECONOMIC
DEVELOPMENT COMMISSION, INC.**

President

Chairman

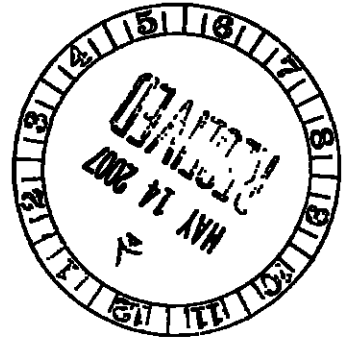
_____(SEAL)
GEORGE S. ROBINSON

_____(SEAL)
ANN P. ROBINSON

May 8, 2007

Dick Keyes
1370 Mountain Circle Drive
Lenoir, NC 28645

Mr Vernon A Williams
Secretary
Surface Transportation Board
395 E Street S W
Washington, DC 20423-0001



Re Protest of Docket No AB-999X Caldwell County Railroad Company
Discontinuance

Dear Secretary Williams

This is to let the STB know that I have sent on May 8, 2007, a copy of my protest to

Mr David H Coburn
Steptoe and Johnson
1330 Connecticut Ave , NW
Washington, DC 20036-1795

Let me know if you need more information

Sincerely,
Dick Keyes
Dick Keyes